

From: "McGarey, Barbara (OD)" <MCGAREYB@od6100m1.od.nih.gov>  
To: "'Harold\_Varmus@nih.gov'" <Harold\_Varmus@nih.gov>  
Cc: "Freire, Maria (OD)" <FreireM@od6100m1.od.nih.gov>,  
    "'rse@umich.edu'"  
        <rse@umich.edu>  
Subject: Paul Berg Policy  
Date: Fri, 8 May 1998 15:36:39 -0400  
Status: RO

I have several reactions to Dr. Berg's suggested new policy.

First, it is similar to one of the recommendations that the workgroup is considering; namely, "encourage free dissemination without legal agreements in cases where prospect of commercial gain is remote." One could look at Dr. Berg's "pledge" as a way to implement this recommendation among the more influential institutions, with the hope of creating a groundswell.

The rest of my comments are rather long, so feel free to skip the specifics -- I'll discuss the proposal with Maria and Becky and see how this might be woven into the workgroup recommendations.

Other comments:

?

1) The policy addresses how institutions send out materials, but not how they bring them in. Some of the offending MTA and license provisions gather momentum and become "standard" because institutions are willing to agree. This is a much tougher issue to confront, because the scientist suffers directly. Nevertheless, a more complete pledge would need something like:

\* "Further, it will be the policy of our institutions to refuse to accept biological materials into our laboratories under more restrictive terms, except in unique circumstances." (this could be limited to apply only to transfers among non-profits)

2) Legal uncertainties would arise with having lots of undocumented transfers, e.g., liability issues coming back to the provider. I'm not sure how much of a real life problem this would become (were legal issues a big problem back when everyone shared freely?)

3) Ownership/inventorship uncertainties would be more difficult to sort through, although having MTAs in place hasn't been all that helpful in preventing such issues;

4) Commercially valuable materials may become completely unavailable under this policy, since the MTA provided a certain comfort level for control of "valued" materials.

5) If the institution sends out a patented material under this policy, they

will only be able to claim a stake in a new development if the development itself infringes the original patent -- this would be consistent with our thinking; no reach-through.

6) I assume that companies would not be willing to adopt the pledge, and therefore non-profits will be sharing freely with companies but companies would continue to require license option agreements (and whatever else) before sharing materials with non-profits. This is lopsided, but consistent with views expressed by the industry workgroup members to the effect that the primary mission of the university is education and research, and that universities are forgetting this in running away with Bayh-Dole.

Barbara

-----  
From: Harold\_Varmus@nih.gov[SMTP:Harold\_Varmus@nih.gov]  
Sent: Friday, May 08, 1998 10:48 AM  
To: Barbara McGarey

>Mime-Version: 1.0  
>Date: Thu, 7 May 1998 10:15:46 -0700  
>To: Harold\_Varmus@nih.gov  
>From: Paul Berg <pberg@cmgm.stanford.edu>  
>  
>Abolishing Material Transfer Agreements: A New Policy  
>  
>  
>  
> Material Transfer Agreements (MTAs) have become increasingly  
>onerous barriers to the free and open exchange of scientific information  
>and materials. Seeking to return to the era where collegiality and  
>sharing take precedence over commercial considerations, the institutions  
>identified below have adopted the following policy. Subject to  
>obligations we have to existing research sponsors and licensees, MTAs will  
>no longer be used for the exchange of biological materials between our  
>faculties and their academic and institutional colleagues elsewhere and,  
>where assured that such materials will not be used in commercial  
>processes, with scientists in the commercial sector as well. Recipients  
>of biological materials are expected not to pass them on to others without  
>the consent of the distributor and to acknowledge their source in  
>resulting publications and presentations. Furthermore, we shall  
>discourage our investigators from entering into sponsored agreements that  
>controvert this policy. We encourage other institutions and private  
>sector research enterprises to adopt a similar practice.  
>  
>  
>

> Paul Berg  
>Cahill Professor of Cancer Research  
>and Biochemistry  
>Director of Beckman Center  
>Stanford University School of Medicine  
>Stanford,California, 94305  
>Tel. #(650) 723-6170  
>Fax #(650) 725-4951  
>Email pberg@cmgm.stanford.edu  
>  
>  
>